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THE COURT OF COMMON PLEAS

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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Anderson County,

Plaintiff,

vs.

Joey Preston and the South Carolina
Retirement System,

Defendants.

TRUE COPY

JUL 15 2013

L. B. Hubby
CLERK OF COURT

C.A. No. 09-CP-04-4482

**PLAINTIFF ANDERSON COUNTY'S
MOTION TO AMEND COMPLAINT**

Plaintiff Anderson County hereby moves under S.C.R.C.P. 15 to amend its Amended Complaint to add an additional cause of action as set forth in Exhibit A hereto, and for leave to file a Second Amended Complaint including that cause of action and seeking relief thereunder, as attached hereto as Exhibit B.

INTRODUCTION

This Court's Order dated May 3, 2013, finds that a total of four County Council members should not have voted on Preston's Severance Package, for reasons of impropriety or the appearance of impropriety. The Order then upholds the approval of the Severance Agreement by County Council on the basis of the votes of three Council members. However, Anderson County Code § 2-37(d) provides that a majority of Council (that is, four members) constitutes a quorum. The invalidation of four votes means there was no quorum, and thus that the approval of the Severance Agreement was null and void.¹

¹ Anderson County has raised this argument in its Motion to Alter or Amend Judgment filed May 13, 2013.

The prospect of invalidation of four votes was not present in the pleadings of this case prior to the Court's Order. In its pleadings and during trial of this matter, Anderson County argued that the votes of only three members of County Council should have been invalidated due to improprieties. Preston denied those allegations and included no allegations in his pleadings that the votes of any Council members were improper or should be disqualified. Preston did, however, suggest at trial that the votes of two other Council members (neither of whom were the subject of Anderson County's allegations of improper voting) were tainted. (In response Anderson County pointed out, among other things, that Preston never sought such relief in his pleadings.) Accordingly, neither party argued for the invalidation of four votes, and only three votes were called into question in the pleadings.

This Court's conclusion, therefore, that four votes should have been disqualified added a new issue into this case—whether a quorum of the Council was present and capable of voting on the Severance Agreement. The proposed Second Amended Complaint adds a claim that – should this Court find, on whatever basis, four or more members of County Council were disqualified from voting on the Severance Agreement – the quorum required pursuant to Anderson County Code § 2-37(d) was lacking and any vote purportedly taken thereon was null and void, and that the Severance Agreement should accordingly be rescinded and declared null and void.

LEGAL STANDARD

This motion is based on Rule 15(a) and (b) of the South Carolina Rules of Civil Procedure.

South Carolina Rule of Civil Procedure 15(a) provides that leave to amend “shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(a), S.C.R.C.P. This rule strongly favors amendments and encourages courts to freely grant leave to

amend. *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct. App. 1987). In short, amendments should be allowed ***at any time*** so long as there is an absence of prejudice.

Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 508, 369 S.E.2d 156, 159 (Ct. App. 1988) (noting that even a lengthy delay in amending a pleading “will not ordinarily be held to bar an amendment in the absence of a finding of prejudice”). The party or parties opposing a motion to amend bear the burden of proving that they will be prejudiced by an amendment. *See Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004) (“[T]he party opposing the motion has the burden of establishing prejudice.”).

Rule 15(b) governs amendments made to conform to the evidence and provides that “when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.” Further, “such amendment . . . may be made upon motion of any party ***at any time, even after judgment . . .***” S.C.R.C.P. 15(b) (emphasis added); *see also* JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 125 (3d ed. 1996) (“There is no time limit for amendments to conform to the evidence, and they may be made at any time the trial court has jurisdiction of the case, even after judgment.”) “Under Rule 15(a) and (b), SCRCP, . . . [c]ourts have wide latitude in amending pleadings.” *Berry v. McLeod*, 328 S.C. 435, 449-50, 492 S.E.2d 794, 802 (Ct. App. 1997).

ARGUMENT

If, as the Order concludes, four members of the Anderson County Council were disqualified from voting on Preston’s Severance Package, the purported approval – by only three members of the Anderson County Council – of that Package on November 18, 2008, was plainly illegal. Three members of Council cannot act. The question of the existence of a quorum

presents a pure legal question, and justice (which is the primary end of all of the Rules of Civil Procedure) requires that it be addressed.

As Anderson County has noted in its Motion to Alter or Amend the Order, we believe the Court, in light of its finding that four votes were improperly cast, can and should invalidate the Severance Package for lack of a quorum whether or not this motion is granted. The absence of a quorum renders the approval of the Severance Package null and void. In any event, Anderson County makes this motion to ensure the matter is fully presented to the Court.

The motion should be granted because Preston cannot demonstrate that any prejudice will result. As the Supreme Court has made clear, “the prejudice that Rule 15 contemplates is a lack of notice that the new issue is to be tried and lack of a full opportunity to introduce testimony to refute it.” *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). Under the unique circumstances of this case, no prejudice of either sort is present. First, Anderson County asserts no “new” factual issue in the Second Amended Complaint that has not already been tried. Preston has long been on notice that the County alleged that three members of the Council should not have voted, and at trial he had ample opportunity to refute those allegations. While Anderson County does not believe that Preston pled his charges against two additional voters, Preston himself introduced that argument to the proceedings and cannot complain about it. The only thing that is “new,” therefore, in the Second Amended Complaint is a legal and logical conclusion that flows necessarily and inescapably from the Court’s conclusion that the votes of four Council members were improper. Preston will have opportunity to contest that legal conclusion, but the facts of disqualification have been fully developed.

Furthermore, the fact that this motion comes after a trial on the merits and issuance of a judgment is no bar to its being granted. Under the corresponding federal rule, a court may grant

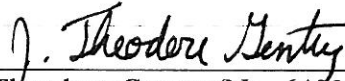
a motion to amend the pleadings after judgment. Fourth Circuit precedent makes clear that “a post-judgment motion to amend is evaluated under the same legal standard as a similar motion filed before judgment was entered—for prejudice, bad faith, or futility.” *Laber*, 438 F.3d at 427 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). For the reasons previously stated – the injustice of upholding an act undertaken by only three members of County Council – the invalidation by the Court of four votes for bias plainly supports altering the prior judgment, granting this motion to amend, and entering judgment for the County on the basis that the enactment of the Severance Package was null and void for lack of a quorum.

In the alternative, amendment is also appropriate pursuant to S.C.R.C.P. 15(b). Although Anderson County objected to Preston’s challenge to additional votes beyond the three challenged by Anderson County, the Court considered Preston’s challenge and relied on it in its Order. Accordingly (and without waiver of Anderson County’s continuing objection to that line of argument), if Preston’s challenge was properly considered, then amendment to conform to the evidence concerning that challenge is proper, and the quorum issue should be considered under Rule 15(b).

Counsel for Anderson County has conferred with counsel for Preston concerning this motion, and counsel for Preston has not consented.

The Severance Package cannot and should not be upheld on the basis of a vote by less than a quorum of Council. Anderson County requests that the Court grant its motion to amend by adding the language proposed in Exhibit A and by praying for corresponding relief and, in light of the Court’s finding that there were only three County Council members who could properly vote on the Severance Package, enter judgment finding the Severance Package to be null and void for lack of a quorum.

Respectfully submitted,



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July 15, 2013

Attorneys for Plaintiff Anderson County

EXHIBIT

A

FOR A TWELFTH CAUSE OF ACTION

88. The prior allegations of this Complaint are realleged as if they were stated fully herein.

89. Anderson County has challenged, for the reasons set forth in this Complaint including impropriety and the appearance of impropriety, three votes of County Council members cast at the November 18, 2008 meeting of Anderson County Council on matters concerning Preston's Severance Agreement.

90. At all times relevant to this matter, the Anderson County Council consisted of seven members.

91. The Anderson County Code § 2-37(d) requires that a majority of Anderson County Council members – that is, four – be present to constitute a quorum. That same Code section further provides that no vote may be taken during the absence of a quorum.

92. While not alleged in the pleadings, counsel for Preston has argued, also on the basis of impropriety or the appearance of impropriety, that votes of Anderson County Council members other than the three challenged by Anderson County should not have been cast on matters concerning Preston's Severance Agreement.

93. If, on whatever basis, this Court concludes that four or more Anderson County Council members were disqualified from voting on Preston's Severance Agreement and related matters, then a quorum was not available for consideration of the Severance Agreement and related matters, and any vote purportedly taken thereon was null and void.

94. In the event this Court concludes that four or more Anderson County Council members were disqualified from voting on the Severance Agreement, Anderson County asks that the Court invalidate, rescind, and designate as null and void the Severance Agreement as required by Anderson County Code § 2-37(d) for lack of a quorum, and direct the defendants to return all

monies received by them and/or paid by Anderson County pursuant to the Severance Agreement,
plus interest.

EXHIBIT

B

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Anderson County, South Carolina,

Plaintiff,

v.

Joey Preston and the South Carolina
Retirement System,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE TENTH CIRCUIT

C.A. NO. 2009-CP-04-4482

**SECOND
AMENDED
COMPLAINT**

Jury Trial Demanded

The plaintiff, Anderson County, South Carolina complaining of the defendants, shows the Court as follows:

1. The plaintiff is the County of Anderson, a body politic and corporate and a political subdivision of the State of South Carolina, established and existing pursuant to the Constitution and laws of South Carolina.
2. The defendant Joey Preston is, upon information and belief, a resident of Anderson County, South Carolina.
3. The defendant South Carolina Retirement System (the "System") is a state agency or entity with its principal place of business in Columbia, South Carolina. It is made a defendant only for the purposes of recovering funds paid to it by Anderson County on behalf of the defendant Preston.
4. For a period of time on and before November 30, 2008, Preston was the county administrator for Anderson County.

5. After challengers won elections for county council in Anderson County in 2008, the defendant Preston presented claims to Anderson County, making the contention that his contract as county administrator had been “anticipatorily breached.”

6. On October 21, 2008, Anderson County Council referred Preston’s claims to a personnel committee chaired by County Councilman Ron Wilson. Council Member Willie Horton McAbee was also a member of the personnel committee. Under Chairman Wilson’s leadership, the Personnel Committee negotiated through legal counsel with Preston’s attorney.

7. At a County Council meeting on November 18, 2008, prior to the new County Council majority taking office in January 2009, Councilman Wilson made a motion that the Council approve a Severance Agreement and Release of All Claims (the “Severance Agreement”) with Preston awarding him over \$1.1 million. Of that sum \$ 780,575.00 was paid to Preston directly (and/or to tax authorities on his behalf) and \$359,258.00 was paid to the System on his behalf. A video of the relevant portions of the County Council meeting is attached as Exhibit A.

8. The Chair of Anderson County Council was Michael Thompson. He presided over the consideration and debate of Mr. Wilson’s motion and related motions and made rulings related to the debate and motions.

9. The Anderson County Council approved the Severance Agreement and the payment of \$1.1 million to and for Preston by a divided vote. The Chair, Mr. Thompson, the Chair of the Personnel Committee, Mr. Wilson, and Mr. McAbee voted for the Severance Agreement and the payment of over \$1.1 million to and for Preston. They also voted for additional motions favorable to the approval of the Severance Agreement.

10. The Severance Agreement provided that Preston would no longer be Anderson County administrator as of November 30, 2008, and Preston agreed to relinquish that position at the end

of business on November 30, 2008. Thereafter, until December 31, 2008, Preston was to continue as a full-time consultant assisting the acting/interim administrator.

11. As shown by the attached email correspondence (Exhibit B), Preston breached the Severance Agreement and his fiduciary duties to Anderson County by falsely back-dating Anderson County records relating to financial benefits for Heather Jones, then the assistant county administrator for economic development, and by acting as county administrator on December 1, 2008:

a. Preston participated with Heather Jones in creating a back-dated memo, falsely dated October 16, 2006, providing that she would be provided a county SUV for her use, including personal uses, and on December 1, 2008, transmitted that memo or caused that memo to be transmitted to authorize such use;

b. Preston participated with Heather Jones in creating a back-dated memo, falsely dated October 16, 2006, providing that Anderson County would pay for the cost of Heather Jones' attending certain classes, and on December 1, 2008, transmitted that memo or caused that memo to be transmitted to authorize such use;

c. On December 1, 2008, Preston participated with Heather Jones in creating a back-dated letter approving travel to Germany by Heather Jones at Anderson County's expense.

12. Unbeknownst to the public and at least some members of Anderson County Council, during 2008 and while the Anderson County Council was considering Preston's claims for severance payments in excess of \$1 million, Preston was engaged in conversations with Chairman Thompson about hiring him as a county employee.

13. Further, during 2008, Preston granted Thompson special consideration in connection with his desire to be hired as a county employee.

14. Thompson had not planned to run for re-election, but at Preston's request, ran for re-election. He was defeated. He continued to pursue with Preston his desire for a county job.

15. During 2008, Preston approved Thompson's attending training for his anticipated county job at Anderson County's expense, including hotels, meals, and mileage, both before and after County Council's consideration of Preston's claims and Severance Agreement.

16. In June of 2008, Thompson falsely told the Anderson Independent newspaper that he had no intention of becoming a county employee. Preston did not correct that false statement.

17. Thompson was under consideration by Preston for county employment at the time the County Council considered Preston's claims for over \$1 million, at the time the County Council considered and voted to enter into the Severance Agreement, at the time Chairman Thompson presided over the consideration of Preston's Severance Agreement by County Council, and at the time that Chairman Thompson voted for the Severance Agreement, for the payments to and for Preston, and for related motions.

18. Thompson voted for this Severance Agreement and payments of over \$1.1 million to and for Preston without ever reading the Severance Agreement.

19. On November 19, the day following the County Council vote granting Preston payments of over \$1.1 million, Thompson went to county administrator-designate Michael Cunningham to be hired as a county employee. Cunningham refused to hire Thompson, stating that his hiring would constitute a conflict of interest because Thompson had voted for Preston's Severance Agreement.

20. Preston, however, was still the Anderson County administrator. He rejected Cunningham's conclusion and informed Thompson that he would be hired.

21. On November 26, 2008, Thompson received an advance of over \$2700 from Anderson County, personally approved by Preston four days before Preston's employment as county administrator ended.

22. Subsequently, after Thompson ceased to be a member of Anderson County Council, then-County Administrator Cunningham personally paid for Thompson's health insurance premiums.

23. After the County Council vote on November 18, 2008, Thompson received training at Anderson County expense, with Preston's approval.

24. Preston did not inform the entire Council of his dealings with Thompson while Thompson was considering the claims Preston made against Anderson County, while he was presiding over County Council during the consideration, the debate, and the voting concerning Preston's Severance Agreement, and when Thompson voted in favor of the Severance Agreement and payments to and for Preston of over \$1.1 million and in favor of related motions.

25. Councilman Wilson was Chair of the Personnel Committee, to which the Council referred Preston's claims against Anderson County. Under Councilman Wilson's leadership, the Personnel Committee oversaw the negotiation of Preston's Severance Agreement. Councilman Wilson made the motion that the County Council approve Preston's Severance Agreement, Councilman Wilson voted for approval of the Severance Agreement, and Councilman Wilson voted for other motions favorable to the Severance Agreement.

26. On September 4, 2007, on behalf of Anderson County, Preston signed a contract with the consulting company of the daughter of Councilman Wilson for consulting services related to agricultural programs. That contract provided that it was a month-to-month contract and that the rate of payment was a fixed hourly rate of \$65.

27. On November 1, 2008, while Preston's claims were before the Council, and under consideration and negotiation by Councilman Wilson's Personnel Committee, and before Councilman Wilson proposed the Severance Agreement and payments of more than \$1.1 million to and for the benefit of Preston, Preston entered into a new contract with the consulting company of Councilman Wilson's daughter that significantly improved the benefits to the consulting company of Councilman Wilson's daughter.

28. Specifically, the new contract increased the hourly rate to \$75 per hour, provided yearly increases in the hourly rate so that it increased to \$95 per hour, provided for payments for additional employees of the consultant, and provided that it was a contract with a definite term of three years, instead of a month-to-month contract. In addition, the November 1, 2008 contract provided for liquidated damages in case Anderson County terminated the contract before the end of three years. If Anderson County had decided to terminate the contract, it could have resulted in liquidated damages of over \$300,000 to the consulting company of Mr. Wilson's daughter.

29. A copy of the contract is attached as Exhibit C.

30. Councilman McAbee was a member of the Personnel Committee, to which the Council referred Preston's claims against Anderson County. The Personnel Committee oversaw the negotiation of Preston's Severance Agreement. Councilman McAbee voted for approval of the Severance Agreement, and Councilman McAbee voted for other motions favorable to the Severance Agreement.

31. In his capacity as County Administrator, Preston routinely approved reimbursement from County funds of travel expenditures for Councilman McAbee and a companion. Those reimbursements were improper, among other reasons because they were not for County business,

they were for the promotion of Councilman McAbee's personal and/or private commercial benefit, and they exceeded County expenditure limits.

32. These improper reimbursements included, but were not limited to, reimbursements that occurred in or around October 2008, which was the same time Preston's Severance Agreement was being considered by the Personnel Committee and the Council as a whole.

33. Preston also advocated for and made County decisions that would result in personal benefit to Councilman McAbee and to his business associates, including but not limited to the County's approval of an incentive package relating to the purchase of a tract of real estate including approximately 38 acres located at Lewis Drive by a company called B&B Properties, for which Allison Properties received a real estate brokerage commission, a portion of which went to McAbee personally, certain purchases of real property by the County, and the closure or abandonment of Lewis Drive.

FOR A FIRST CAUSE OF ACTION

34. The prior allegations of this Complaint are realleged as if they were stated fully herein.

35. The Severance Agreement was adopted by Anderson County Council in violation of the S.C. Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code §§ 8-13-100 et seq., in violation of the Anderson County Code §§ 2-37(g) and 2-288, and in violation of the common law.

36. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A SECOND CAUSE OF ACTION

37. The prior allegations of this Complaint are realleged as if they were stated fully herein.

38. The Severance Agreement is void for being contrary to the public policy of South Carolina and Anderson County.

39. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A THIRD CAUSE OF ACTION

40. The prior allegations of this Complaint are realleged as if they were stated fully herein.

41. As County Administrator, Preston had fiduciary duties to Anderson County and the Anderson County Council.

42. Preston took actions to cause the negotiation, consideration, and approval of the Severance Agreement by Anderson County Council and three of its members in violation of the S.C. Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code §§ 8-13-100 et seq., in violation of the Anderson County Code §§ 2-37(g) and 2-288, and in violation of the common law.

43. Preston failed to inform the entire County Council of his dealings with Mr. Thompson, Mr. McAbee and Mr. Wilson's daughter prior to the presentation to, negotiation of, consideration of, and approval of his Severance Agreement by Anderson County Council.

44. Preston also did not correct the false public statement that Mr. Thompson made, claiming he had no intention of seeking employment with Anderson County.

45. Preston breached his fiduciary duties to Anderson County and Anderson County Council.

46. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A FOURTH CAUSE OF ACTION

47. The prior allegations of this Complaint are realleged as if they were stated fully herein.

48. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson, Mr. McAbee, and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur.

49. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

50. Preston had knowledge of the information he did not disclose, and these omissions were material.

51. These omissions resulted in Anderson County and Anderson County Council acting on false information; the omissions were material; Preston knew the omissions resulted in false information or acted in reckless disregard of whether they resulted in false information; Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose; Anderson County and Anderson County Council relied on the information presented including Preston's omission of information; Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented. Preston sought to benefit, and did benefit, from the omissions.

52. Preston committed fraud.

53. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A FIFTH CAUSE OF ACTION

54. The prior allegations of this Complaint are realleged as if they were stated fully herein.

55. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson, Mr. McAbee, and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur.

56. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

57. These omissions resulted in Anderson County and Anderson County Council acting on false information; the omissions were material; Preston knew the omissions resulted in false information or acted in reckless disregard of whether they resulted in false information; Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose; Anderson County and Anderson County Council relied on the information presented including Preston's omission of information; Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented.

58. Preston's omissions benefited Preston, and Preston sought to benefit himself in the omissions.

59. Preston gained an advantage by failing to disclose the information set out above.

60. Preston committed constructive fraud.

61. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A SIXTH CAUSE OF ACTION

62. The prior allegations of this Complaint are realleged as if they were stated fully herein.

63. Preston had a duty to inform Anderson County and Anderson County Council, as set out above, concerning his actions related to Mr. Thompson, Mr. McAbee, and Mr. Wilson and to correct the false statement made by Mr. Thompson and a duty to inform Anderson County and Anderson County Council concerning the violations of law, set out above, which he had caused to occur.

64. Preston remained silent and did not make the disclosures to Anderson County and Anderson County Council that he had a duty to make.

65. Preston breached his duty of due care in failing to make disclosure.

66. Anderson County and one or more members of Anderson County Council were ignorant of the information that Preston did not disclose; that information was material; Anderson County and Anderson County Council relied on the information presented including Preston's omission of information; Anderson County and Anderson County Council had a right to rely thereon; and Anderson County and Anderson County Council were injured by the consequent adoption of the Severance Agreement as presented.

67. Preston's omissions benefited Preston, and Preston sought to benefit himself in the omissions.

68. Preston gained an advantage by failing to disclose the information set out above.

69. Preston committed a negligent misrepresentation.

70. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A SEVENTH CAUSE OF ACTION

71. The prior allegations of this Complaint are realleged as if they were stated fully herein.

72. The action of Anderson County Council in approving the Severance Agreement was capricious, unreasonable, and a result of fraud.

73. The action of Anderson County Council in approving the Severance Agreement is invalid.

74. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR AN EIGHTH CAUSE OF ACTION

75. The prior allegations of this Complaint are realleged as if they were stated fully herein.

76. Alternatively, Preston committed a fundamental and substantial breach of the Severance Agreement when he acted as Anderson County Administrator after November 30, 2008 and when he falsely created and back-dated documents.

77. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A NINTH CAUSE OF ACTION

78. The prior allegations of this Complaint are realleged as if they were stated fully herein.

79. Alternatively, Preston breached his fiduciary duties to Anderson County when he acted as Anderson County Administrator after November 30, 2008 and when he falsely created and back-dated documents.

80. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A TENTH CAUSE OF ACTION

81. The prior allegations of this Complaint are realleged as if they were stated fully herein.

82. The amounts paid to the System pursuant to the Severance Agreement were wrongfully paid, for the reasons set forth herein.

83. It would therefore be inequitable for those amounts to remain in possession of the System, or to be held for the benefit of Preston.

84. A constructive trust should be imposed on those amounts, and they should be held by the System in trust for Anderson County and repaid to Anderson County.

FOR AN ELEVENTH CAUSE OF ACTION

85. The prior allegations of this Complaint are realleged as if they were stated fully herein.

86. Preston has been unjustly enriched by the Severance Agreement, at the expense of Anderson County and its taxpayers.

87. Anderson County asks that the Court invalidate and rescind the Severance Agreement and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

FOR A TWELFTH CAUSE OF ACTION

88. The prior allegations of this Complaint are realleged as if they were stated fully herein.

89. Anderson County has challenged, for the reasons set forth in this Complaint including impropriety and the appearance of impropriety, three votes of County Council members cast at the November 18, 2008 meeting of Anderson County Council on matters concerning Preston's Severance Agreement.

90. At all times relevant to this matter, the Anderson County Council consisted of seven members.

91. The Anderson County Code § 2-37(d) requires that a majority of Anderson County Council members – that is, four – be present to constitute a quorum. That same Code section further provides that no vote may be taken during the absence of a quorum.

92. While not alleged in the pleadings, counsel for Preston has argued, also on the basis of impropriety or the appearance of impropriety, that votes of Anderson County Council members other than the three challenged by Anderson County should not have been cast on matters concerning Preston's Severance Agreement.

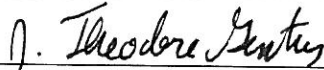
93. If, on whatever basis, this Court concludes that four or more Anderson County Council members were disqualified from voting on Preston's Severance Agreement and related matters, then a quorum was not available for consideration of the Severance Agreement and related matters, and any vote purportedly taken thereon was null and void.

94. In the event this Court concludes that four or more Anderson County Council members were disqualified from voting on the Severance Agreement, Anderson County asks that the Court invalidate, rescind, and designate as null and void the Severance Agreement as required by Anderson County Code § 2-37(d) for lack of a quorum, and direct the defendants to return all monies received by them and/or paid by Anderson County pursuant to the Severance Agreement, plus interest.

WHEREFORE, Anderson County asks that the Court:

1. Rescind and invalidate as null and void the Severance Agreement and direct and order Preston to return to Anderson County all funds paid to him or paid on his behalf in connection with the Severance Agreement;
2. Rescind the Severance Agreement, impose a trust on the amounts paid to the System pursuant to the Severance Agreement, and direct and order the System to return to Anderson County all funds paid to it on Preston's behalf in connection with the Severance Agreement;
3. Award Anderson County pre-judgment interest;
4. Enter judgment against the defendants and in favor of Anderson County consistent herewith;
5. Grant Anderson County such other relief as the Court considers just and appropriate.

Respectfully submitted,



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Date: July 15, 2013
Greenville, South Carolina

Attorneys for Plaintiff Anderson County